

Rural Utilities Service, USDA

§ 1744.55

property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act: Provided, however, that property integral to the operation of projects financed with loans made or guaranteed by RUS shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

[51 FR 32430, Sept. 12, 1986, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990. And further redesignated at 66 FR 41760, Aug. 9, 2001]

§§ 1744.41–1744.49 [Reserved]

§ 1744.50 Non-Act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;

(5) Fair market value of property acquired by the borrower as part of the project;

(6) Impact of the project on the ratio of the borrower's secured debt to assets;

(7) Projected growth in borrower's system and project equity; and

(8) Amount of funds available for plant additions, replacements and other similar costs of the system and the project.

(c) In determining whether the accommodation or subordination is in the interests of the Government, the Administrator may consider, among other matters, whether the project will improve the borrower's financial strength and the assurance of repayment of Government debt.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 43716, Aug. 25, 1994. Further redesignated at 66 FR 41760, Aug. 9, 2001 and amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.51–1744.54 [Reserved]

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250–1590.

(b) An application for a lien accommodation or subordination shall include the following supporting information:

(1) A board Resolution from the applicant requesting the lien accommodation or subordination and stating the general purpose for which the funds from the private lender will be used, the proposed amount of the loan, and the proposed terms and conditions of the loan;

(2) An opinion from counsel representing the applicant that the applicant has the authority under its articles of incorporation, bylaws, and under applicable state law to undertake the project;

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(3) Engineering and pertinent studies related to the projects or purposes to be financed, when applicable;

(4) Feasibility studies with pro forma financial statements showing the ability to repay the loan and provide an appropriate margin or net income;

(5) Any other information or documentation deemed pertinent by the borrower or the Administrator in support of the application.

(c) When the Administrator makes a determination that an application for

an accommodation or subordination will not be approved the Administrator shall set forth the reasons therefor in writing and furnish such determination and reasons to the borrower within 30 days of the determination.

[51 FR 32430, Sept. 12, 1986 Redesignated at 55 FR 39396, Sept. 27, 1990. And further redesignated at 66 FR 41760, Aug. 9, 2001 and amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.56–1744.59 [Reserved]

APPENDIX A TO SUBPART B OF PART 1744—STATEMENT, CERTIFICATION, AND AGREEMENT OF BORROWER'S PRESIDENT OF BOARD OF DIRECTORS REGARDING REFINANCING AND REFUNDING NOTES PURSUANT TO 7 CFR 1744.30(c)

I _____ (Name of President) _____, am President of _____ (Name of Borrower) _____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) _____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(c).

(a) The private lender:

- _____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
- _____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I hereby certify that all other requirements of 7 CFR 1744.30(c) are met; said requirements being as follows:

- (1) No default has occurred and is continuing under the government mortgage;
 - (2) The principal amount of such refinancing or refunding notes, which is _____ dollars, will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded; such outstanding principal balance being _____ dollars;
 - (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, will not exceed the weighted-average remaining life of the notes being refinanced or refunded, which is _____ years;
 - (4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and
 - (5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.
- (c) The borrower agrees that the private lender notes will provide for substantially level debt service or level principal amortization.
- (d) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, subpart B.

Signed

Name

Date

Name and Address of Borrower:

[66 FR 41763, Aug. 9, 2001]